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7590	08/29/2007		EXAMINER	
James G. Gatto, Esq. Hunton & Williams Suite 1200 1900 K Street, N.W. Washington, DC 20006			ELISCA, PIERRE E	
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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

**MAILED**

Application Number: 09/749,408

Filing Date: December 28, 2000

Appellant(s): SAURIOL ET AL.

AUG 29 2007

**GROUP 3600**

Ozzie A. Farres

For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 05/04/2007 appealing from the Office action mailed 09/06/2006.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

6,332,134 Foster 12/2001

6,178,409 Weber et al 01/2001

6,820,804 Segal et al 11/2004

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

The rejection to claims 1, 3-5 and 7-12 under 35 U.S.C. 103 (a) as being unpatentable over Foster in view of Segal and to claims 2 and 6 as being unpatentable over Foster in view of Weber as set forth in the office action mailed on 03/29/2006 is maintained.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

**Claims 1, 3, 4, 5, 7 and 8-12 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Foster in view of Segal et al (U.S. Pat. No. 6,820,804).** As per claims 1, 3, 4, 5, 7 and 8-12 Foster substantially discloses a financial transaction system such that Applicants' step of providing a secured network that stores consumer data and approved vendor information, Applicants' step of receiving transaction information at the secured network, and Applicants' step of processing the transaction information to determine whether the transaction information conforms with the stored consumer data and approved vendor information reads on col 8, lines 19-28, and applicants' step of delivering the stored consumer data to the vendor if the transaction

information is determined to conform with the stored consumer data and approved vendor information reads on the message to the merchant, from the system, of the cardholder's shipping address, col 8, lines 47-50.

Foster fails to explicitly disclose Applicant's newly added limitation wherein said receipt of the stored consumer data by the vendor enables the vendor to receive payment for the e-commerce transaction. However, Segal discloses a system/method for performing a purchase transaction in which a consumer provides a merchant with a credit card for payment. The merchant then uses the credit card number to debit the credit card account of the consumer. The consumer signs a receipt evidencing the transaction. The merchant keeps the original signed receipt and gives the consumer a copy of the signed receipt. The signed receipts are evidence of proof of purchase for both the consumer and the merchant (see., Segal, col 1, lines 14-28). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the financial transaction of Foster by including the limitation detailed above as taught by Segal because this would allow an authorized person to act on behalf of the consumer and purchase goods or services.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 6 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Foster in view of Weber et al (U.S. Pat. No. 6,178,409).

Although Foster does not explicitly disclose the use of a VPN, Weber discloses a virtual private network between a gateway and a host processor that is established to expedite host communication (see., col 91, lines 50-61). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the system of foster to utilize a virtual private network as VPN is known to provide greater security when performing transactions.

#### **(10) Response to Argument**

In response to Applicant's arguments filed on 06/29/2006, Applicant argues that the prior art of record (Foster) does not disclose or suggest:

a. "a secured network". However, the Examiner respectfully disagrees with this assertion since Foster discloses an order verification reply target (OVRT) for verifying a cardholder and a merchant transactions, and therefore is readable as a verification means (or secured network) for delivering secure transactions to the merchant and the cardholder .see., col 8, lines 12-59.

b. Applicant also argues that Segal does not disclose or suggest receipt of the stored consumer data by the vendor enables the vendor to receive payment for the e-commerce transaction. However, Segal discloses a system/method for performing a purchase transaction in which a consumer provides a merchant with a credit card for

payment. The merchant then uses the credit card number to debit the credit card account of the consumer. The consumer signs a receipt evidencing the transaction. The merchant keeps the original signed receipt and gives the consumer a copy of the signed receipt. The signed receipts are evidence of proof of purchase for both the consumer and the merchant (see., Segal, col 1, lines 14-28). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the financial transaction of Foster by including the limitation detailed above as taught by Segal because this would allow an authorized person to act on behalf of the consumer and purchase goods or services.

c. Applicant further argues that the Office action has failed to set forth a *prima facie* case of obviousness for the claims. The Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

The rationale to modify or combine the prior art does not have to be expressly stated in the prior art; the rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent established by prior case law. *In re Fine*, 837 F.2d 1071, 5USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). See also *In re Eli Lilli & Co.*, 902 F.2d 943, 14 USPQ2d 1741 (Fed. Cir. 1990) (discussion of reliance on legal precedent); *In re Nilssen*, 851

F.2d 1401, 7USPQ2d 1500 (Fed. Cir. 1988) (references do not have to explicitly suggest combining teachings); Ex parte Clapp, 227 USPQ 972 (Bd. Pat. App & Inter); and Ex parte Levengood, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993) (reliance on logic and sound scientific reasoning).

Also in reference to Ex parte Levengood, 28 USPQ2d, 1301, the court stated that "Obviousness is a legal conclusion, the determination of which is a question of patent law.

Motivation for combining the teachings of the various references need not to explicitly found in the reference themselves, In re Keller, 642 F.2d 413, 208USPQ 871 (CCPA 1981). Indeed, the Examiner may provide an explanation based on logic and sound scientific reasoning that will support a holding of obviousness. In re Soli, 317 F.2d 941 137 USPQ 797 (CCPA 1963)."

**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Art Unit: 3621

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,  
PIERRE EDDY ELISCA  
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